

Attachment I

MEMORANDUM

Date: Tuesday, December 27, 2005

Subject: Request for Facility-Specific Information to Support Financial Assurance Analysis

From: Robert Hall, Director
Permits and State Programs Division
Office of Solid Waste

To: RCRA Regional Directors
Regions 1 – 4

Purpose

This memo requests that your staff review relevant permit files, financial assurance mechanisms, and other historical information for select RCRA Treatment, Storage, or Disposal (TSD) Facilities which have been proposed to the NPL since 1991.

Background

The Superfund 120 Day Study (*SUPERFUND: Building on the Past, Looking to the Future*, April 2004) is an internally generated review of the Superfund program. It was designed to identify areas where increased programmatic efficiencies could result in additional sources of funds, allowing more long-term cleanups to be initiated and completed within the current budgetary framework. As a follow-up to the study, an Action Plan containing 108 recommendations was created and finalized in January 2005. Three of these recommendations specifically concern financial assurance for hazardous waste facilities, tasking EPA to investigate whether current regulations adequately prevent RCRA facilities from becoming high-visibility Superfund sites incurring significant CERCLA expenditures.¹

The Office of Solid Waste has worked closely with the Office of Superfund Remediation and Technology Innovation, the Office of Site Remediation Enforcement, and the Office of Emergency Management on these financial assurance recommendations. Preliminary results demonstrate that TSD facilities comprise 9% of the NPL universe, while accounting for 10% of total NPL expenditures. Furthermore, of the 1587 sites on the NPL, 40 of these (or less than 3%) are RCRA TSDs which were proposed to the NPL since 1991.

In order for us to properly characterize these 40 TSD facilities, it is necessary to examine their RCRA histories and activities on an individual basis. It is crucial to discover whether the cleanup issues occurring at these TSDs are those which can be addressed by financial assurance changes, or whether the environmental issues resulting from their waste disposal practices were so substantial that alterations to the RCRA Financial Assurance framework would not have prevented these CERCLA actions.

Request

For these reasons, OSW is asking for regional support to obtain more in depth information on these facilities. We conducted a series of regional conference calls on this issue in early September and received valuable information on some of these facilities. We have incorporated this information into write-ups of individual sites (including RCRA facility histories, waste management practices, financial assurance issues, unit-specific data from RCRAInfo, etc.). A table has also been created which summarizes this information in a matrix format. However, there are still significant knowledge gaps which need to be addressed in order to obtain a complete understanding of facilities' histories and RCRA operations. We are asking you to have your staff review the write-ups of the facilities in your respective regions and add as much information as possible, as well as correct anything which they believe to be in error. Some of the write-ups contain direct questions on certain facilities which your staff hopefully will be able to answer. Also, please fill in and review the matrix (for those sites in your regions) to the best of your abilities.

When reviewing the facility-specific write-ups, please consider the following types of questions:

1. Was there financial assurance in place for the regulated units?
 - What type of mechanism was used and which units were covered?
 - For a facility using the financial test, was it passing the financial test at the time of NPL proposal?
 - How much (if any) of the financial assurance money has been collected and used for closure/post-closure or Corrective Action activities by the State?
2. Was there financial assurance for Corrective Action at Solid Waste Management Units? (We do not expect many of these facilities to have had this, but let us know of any facilities which did indeed have this in place.)
3. If the facility is bankrupt:
 - If using the financial test, was it passing the test at the time of the bankruptcy?
 - What was the reason for the bankruptcy: marginal economic viability or a general economic or industry sector downturn?
4. At the time the facility went over to Superfund, what was the reason?
 - Unwilling owner/operator?
 - Bankruptcy?
 - Widespread and uncontrolled contamination, i.e., a large Corrective Action burden? (If so, when did the major release occur, and was it pre- or post- RCRA inception?)
 - Closure issues (e.g., insufficient closure cost estimates)?
 - Failure of financial assurance (what happened)?
5. When was the Part A for the facility submitted?
6. Did the facility have units that lost Interim Status?
 - If so, when and why, and which ones lost Interim Status?
7. Of the money Superfund spent cleaning up the site, how much money was recovered during the Cost Recovery process?
8. Is there anything else in the RCRA history of the facility that would be important for this analysis?

I appreciate your efforts in verifying the current information and adding to it where there presently are gaps. We understand that you may need to coordinate with your States to gather this information and that this may take some time. However, we would like this information by January 20, 2006. I look forward to receiving your responses. If your staff members have any further questions, please feel free to contact Vernon Myers at (703) 308-8660 or Michael Kaufman at (703) 308-0436.

¹ **Recommendation 10:** OSWER should evaluate the history of NPL listings and removal actions to determine what percent were RCRA treatment, storage, and disposal facilities or hazardous waste generators and to what extent these facilities present a continuing burden to the Superfund program. (Near term)

Recommendation 11: If the evaluation confirms a high correlation with RCRA regulated facilities, OSWER and OECA should examine different approaches to financial assurance under the RCRA program to reduce the likelihood of RCRA-regulated facilities becoming part of the future Superfund universe. (Long term)

Recommendation 12: For facilities not covered under RCRA, OSWER should study whether promulgating new regulations under CERCLA's broad financial assurance authorities could reduce the future needs of the Superfund program. (Long term)

(*SUPERFUND: Building on the Past, Looking to the Future*, April 22, 2004, p. 40)